

TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: CALIFORNIA POLICY FOR STATEWIDE AND OPTIONAL JTPA
WAIVERS

EXECUTIVE SUMMARY:

Purpose:

This directive provides supplemental guidance to the Service Delivery Areas (SDA) for implementation of the three statewide waivers and six of the seven optional waivers of the Job Training Partnership Act (JTPA) approved by the Department of Labor (DOL).

Scope:

All recipients of JTPA funding must implement the three state-imposed waivers. Selection of any or all of the remaining seven optional waivers is a local decision.

Effective Date:

Statewide waivers are effective retroactively to July 1, 1998-June 30, 1999. The SDAs selecting statewide waivers only must complete the administrative requirements of JTPA Directive D97-27 and forward the "Waiver Checklist and Performance Agreement" to the state.

While effective until June 30, 1999, optional waivers are not retroactive to July 1, 1998. Optional waivers are effective only upon the SDA's completion of all administrative requirements stated in JTPA Directive D97-27, and the state's receipt of the "Waiver Checklist and Performance Agreement."

REFERENCES:

- Public Law 104-208
- Public Law 105-78
- Job Training Partnership Act
- Title 20, Code of Federal Regulations (CFR), Part 626
- DOL Training and Employment Information Notice (TEIN) 11-96, dated November 8, 1996, Subject: Statutory and Regulatory Waiver Authority of the Job Training Partnership Act and Wagner-Peyser Act
- DOL Training and Employment Guidance Letter (TEGL) 6-96, dated April 1, 1997, Subject: Guidelines for Implementing Job Training System Improvements Through Waivers of JTPA and the Wagner-Peyser Act

- JTPA Directive D97-27, dated July 24, 1998, Subject: Implementation of JTPA Waivers
- JTPA Information Bulletin B97-83, dated January 23, 1998, Subject: Status of the California Waiver Plan
- JTPA Information Bulletin B97-86, dated January 30, 1998, Subject: Proposed Model For Measurement Of Performance Under the California State Waiver Plan
- JTPA Information Bulletin B97-144, dated June 4, 1998, Subject: California JTPA Waiver Grant Agreement Modification
- California State Waiver Plan, dated May 1997, Subject: Workforce Development Branch/Employment Development Department

STATE-IMPOSED REQUIREMENTS:

This directive contains state-imposed requirements that are printed in ***bold, italic type***.

FILING INSTRUCTIONS:

This directive supplements existing state and federal policy for nine of the ten waivers approved by DOL, and finalizes Draft Directive DD-5 issued for comment on September 22, 1998. State policy authorizing *Employment Generating Activities* was issued separately. Retain this directive until further notice.

BACKGROUND:

The DOL Appropriations Act for 1997 (Public Law 104-208) provided authority for the Secretary of Labor to grant states statutory and regulatory waivers of JTPA and Sections 8, 9, and 10 of the Wagner-Peyser Act, with specified exceptions. This authority was extended by the DOL Appropriations Act for 1998 (Public Law 105-78). States could apply for waivers by submitting a plan including, but not limited to, the goals to be achieved, the expected outcomes, a description of the individuals impacted by the waivers, the monitoring process, and the public review and comment process.

The California State Waiver Plan was signed by the Governor and subsequently received by DOL for approval on May 23, 1997. The original plan, developed with the cooperation and input of a wide variety of stakeholders, contained the state's request for 12 waivers of JTPA.

The DOL approved the state's waiver plan with modifications on May 8, 1998. While approving California's unique "cafeteria" selection process for optional waivers, DOL rejected the state's proposal of varying performance measure increases among waivers. The DOL imposed a performance increase of 5 percent statewide. Additionally, DOL directed the state to integrate performance expectations into its Title II incentive award process.

POLICY AND PROCEDURES:

Statewide Waivers:

The three statewide waivers will be effective for Program Year (PY) 1998. As stated in JTPA Directive D97-27, the SDA must return the “Waiver Checklist and Performance Agreement” (attachment to JTPA Directive D97-27) even if it chooses not to implement any of the DOL approved optional waivers. Statewide waivers are retroactive to July 1, 1998.

If the SDA previously conducted its public review process, collected its assurances and signatures and can verify these documents are on file with the state, the SDA administrator may verify the selection of the statewide waivers only, or the statewide and any optional waivers, sign the “Waiver Checklist and Performance Agreement,” and return it to the state as directed in JTPA Directive D97-27. Further administrative guidance in JTPA Directive D97-27 must be followed.

The following three statewide waivers require systemwide changes in reporting and accounting procedures. These waivers must be implemented in all SDAs:

- Reduce the cost categories to two, administration and program, for all programs.
- Replace the Youth Entered Employment Rate and Youth Employability Enhancements Rate with one Youth Positive Termination Rate performance standard.
- Replace Title III Post-Program Follow-Up (PPFU) requirements with Unemployment Insurance (UI) base wage file matching.

1) Reduce the Cost Categories to Two: Administration and Program, for all Programs

Waiver Background

The JTPA requires Title II expenditures to be classified into three categories: Administration, Direct Training, and Training Related/Support Services. Title III expenditures are classified into five categories: Administration, Basic Readjustment Services, Retraining, Supportive Services, and Needs-Related Payments. The JTPA establishes cost limits for both titles and a minimum training/retraining requirement for Titles II-A, II-C, and III. In addition, there is no limit to Title III Needs-Related Payments. For Title II-B, there are two cost categories: Training and Supportive Services, and Administration. The waiver merges the cost categories into two: Administration and Program Costs. With only two categories, the minimum training/retraining requirements are no longer in effect.

Affected Laws and Policies

- JTPA Sections 108(b)(1-4) and (c); 315(a-b)
- Title 20 CFR Sections 627.440 (b), (c)(1) and (d); 627.445(a)(1)(i) and (a)(2)(i); 631.13 (a)(1) and (c-f); and 631.14(a-b)
- JTPA Directive D95-26, dated December 27, 1995, Subject: Title II Cost Limitations

- JTPA Directive D96-21, dated April 3, 1997, Subject: Title III Cost Limitations Policy

The waiver applies to funds available for expenditure in PY 1998 and merges the cost categories into two: Administration and Program Costs. The maximum expenditure limits for administration by title are retained. The minimum expenditure requirements for training/retraining and the maximum needs-related expenditure limit are eliminated for PY 1998. Cost compliance for funds closed during the program year will use the waiver criteria. ***First, we will make a calculation to determine compliance with the Administration expenditure limit. Second, we will make a calculation of compliance with Program Cost categories based on the original allocation minus expenditures during PY 1998.***

For purposes of reporting under Title II, program expenditures other than Administration should be recorded as Training Related/Support Services. For Title III, report program expenditures as Retraining. The SDAs should make every effort to maintain the same quality of training services to participants as provided in PY 1997.

2) Utilize the Youth Positive Termination Rate as a Core Performance Standard

Waiver Background

There are two measures of performance for youth programs, the Entered Employment Rate and the Employability Enhancement Rate. Both of these outcomes are calculated based on all program terminees (ages 14–21), who received services beyond objective assessment. For example, the Entered Employment Rate calculation includes data for youth ages 14-17. This age group of youth usually does not go to work, but returns to school. Conversely, the computation for the Employment Enhancement Rate includes data for youth ages 18-21, who usually get placed into jobs. While entering employment may be a desirable goal for youth ages 18-21, it is not necessarily appropriate for youth ages 14-17. For these youth, completing their education and obtaining relevant workplace skills or “employability enhancements” are the appropriate goals.

By calculating the outcomes for each of these two groups together to reflect all positive program terminations, the SDAs will focus on tailoring services to meet the needs of the individual youth. This eliminates offering and providing services not appropriate to the customer, but necessary for the SDA to meet the youth core performance standards. In addition, it provides better coordination between the One-Stop Career Center and School-to-Career systems.

Affected Laws and Policies

- JTPA Section 106(b)
- DOL TEGL 4-95, Change 2, dated May 3, 1996
- DOL TEIN 5-93, Change 1, dated June 23, 1994
- JTPA Directive D97-12, dated January 20, 1998, Subject: Title II Performance Standards for Program Year 1997-98

Policy

Replace the two youth performance standards (Youth Entered Employment Rate and Youth Employability Enhancement Rate) with the DOL noncore standard entitled "Youth Positive Termination Rate" (YPT). The YPT is defined as: "The number of youth who were employed or enhanced as a percentage of the total number of youth who terminated and received services beyond objective assessment." Additional guidance on the calculation of the YPT performance standard for PY 1998-99 will be included in the PY 1998-99 Title II performance standards directive.

3) Waive the Title III PPFU Requirements

Waiver Background

The JTPA Standardized Program Information Report (SPIR) instructions in TEIN 5-93, Change 1, require that terminated participants be assessed for post-program outcomes. They are to be contacted by telephone or in person as soon as possible after the 13th week after termination, but no later than the 17th calendar week after termination. This requirement places an unnecessary administrative burden on the state and the SDAs. The PPFU is a costly administrative process that, under Title III, is not necessary for performance standards. The DOL has approved the state's waiver request to use the UI base wage information to replace the current Title III PPFU process.

Affected Laws and Policies

- DOL TEIN 5-93, Change 1, dated June 23, 1994
- JTPA Directive D97-15, dated February 23, 1998, Subject: PPFU Data Collection and Reporting

Policy

The Job Training Partnership Division (JTPD) will use the UI base wage file to follow-up on dislocated workers served under Title III beginning July 1, 1998 through June 30, 1999. The DOL is in the process of revising the SPIR instructions to include reporting requirements and performance models for this new follow-up method. The JTPD is developing an extract program for the Job Training Automation system that will be used by SDAs to report Title III follow-up data. Until further notice, SDAs should continue to submit terminnee information to JTPD on a monthly basis. Once DOL has issued the final SPIR instructions and the Title III performance models, additional guidance for Title III PPFU will be provided to SDAs under separate cover.

Optional Waivers

The DOL approved seven of the nine optional waivers requested by the state. ***Prior to implementing optional waivers, SDAs must complete the administrative requirements of JTPA Directive D97-27. This includes completing a public review process, providing assurances and signatures, and forwarding the “Waiver Checklist and Performance Agreement” to the state.***

Optional waivers may not be implemented until all administrative requirements are completed and the checklist is received by the state. Unlike statewide waivers, optional waivers are not retroactive to July 1, 1998.

The following seven optional waivers may be implemented by all SDAs:

- Allow stand-alone job search, job search assistance, and work experience.
- Allow the provision of training (including On-the-Job Training [OJT] with a current or former employer) as a post-termination service and allow post-termination services for up to one year for all titles.
- Exclude Social Security Disability Income (SSDI) as income when determining eligibility for Title II services.
- Allow youth OJT without adult wage requirements.
- Allow flexibility to offer the full range of employability enhancement training to all youth, regardless of age.
- Allow prescribed use of limited JTPA funds for employment-generating activities.
- Allow the use of program income earned in one JTPA program title to be used in any JTPA title.

1) Allow Stand-Alone Job Search, Job Search Assistance, and Work Experience

Waiver Background

Job search assistance means the provision of instruction and support needed to provide participants with the skills necessary for acquiring full-time employment. As currently allowed by law, Title II and Title III participants may receive job search assistance. Unlike Title III, adult and youth participants under Title II generally cannot receive these services unless they are combined with additional basic education or skills training.

Title II participants are generally prohibited from receiving stand-alone work experience unless combined with other activities. Title III participants are prohibited from participating in work experience activities. These restrictions prevent SDAs from offering services to participants without the inclusion of additional requirements or may prohibit serving specific applicants altogether. This may result in additional costs to the SDA.

Affected Laws and Policies

a) Job Search, Job Search Assistance as a Stand-Alone Service

- JTPA Sections 204(c)(2)(A) & (B); 264(d)(3)(B)
- Title 20 CFR Section 628.535(b)(2)

b) Stand-Alone Work Experience For All Adults and Youth

- JTPA Sections 204(b)(1)(I); 204(c)(2)(A); 264(c)(1)(A); 264(d)(3)(B)
- Title 20 CFR Section 627.245(d) & (e)

(No state guidance in effect at this time.)

Policy

a) Stand-Alone Job Search, Job Search Assistance

The SDAs may provide Title II participants with stand-alone job search assistance. This activity may only be provided if the participant's objective assessment cites the intervention as the most appropriate intervention strategy. The activity must be included as part of the participant's Individual Service Strategy (ISS).

b) Stand-Alone Work Experience

The SDAs may provide Title II and Title III participants with stand-alone work experience. This activity may only be provided if the participant's objective assessment cites the intervention as the most appropriate intervention strategy. The activity must be included as part of the participant's ISS or Title III Individual Readjustment Plan.

2) Allow the Provision of Training as a Post-Termination Service

Waiver Background

The JTPA Amendments of 1992 and the implementing regulations allow SDAs to provide supportive services, with the exception of financial assistance, to Title II participants for a period up to one year after the date they have completed the program. For Title III participants, counseling necessary to assist participants to retain employment may be provided during the six months following the participants' completion of training. An OJT assignment with a participant's previous or current employer in the same, similar, or upgraded job is not permitted.

Affected Laws and Policies

- JTPA 204(c)(4); 314(c)(15)
- Title 20 CFR Sections 627.240(f)(3); 627.310(e)
- JTPA Directive 95-24, dated December 20, 1995, Subject: Payments to Participants, Supportive Services and Financial Assistance
- JTPA Directive 95-27, dated January 30, 1996, Subject: Termination of Title III Participants Who Return to Work with Their Layoff Employer

- JTPA Client Forms Handbook
- JTPA Client Forms Manual

Policy

An SDA may provide both Title II and Title III participants training (including OJT with a current or previous employer) and supportive services (with the exception of financial assistance) as post-termination services for up to one year from the date a participant terminates from a Title II or Title III program. Post-termination OJTs are permitted with the participant's current employer in an upgraded job on the condition that OJT results in the acquisition of new skills and higher pay for the participant. Additionally, that employer may not receive federal funding for training or retraining an individual whom the employer had laid off and subsequently called back or rehired. All costs incurred, as a result of the post-termination training, shall be charged to the Title in which the participant was originally enrolled.

In order to comply with DOL's record keeping requirements for this waiver, post-termination services received will need to be tracked locally as well as any outcomes for post-termination training or services provided. The Job Training Automation screens have been created to track these services. Further direction on the tracking process will be issued.

3) Exclude SSDI for Purposes of Determining Eligibility

Waiver Background

The JTPA Directive D97-7 retains the previously issued DOL Title II Eligibility Documentation Technical Assistance Guide (TAG) as state policy guidance for eligibility. Attachments to the TAG establish acceptable inclusions and exclusions to the definition of "Family Income" for the purpose of establishing economic eligibility for JTPA. Regular payments from Social Security are included as income for this purpose. Employee payroll deductions under Social Security include retirement, survivor benefits, and SSDI.

Affected Laws and Policies

- JTPA Sections 4(8), 142(b)
- JTPA Final Rule, Title 20 CFR Section 626.5
- JTPA Directive D97-7, dated October 7, 1996, Subject: Eligibility Determination and Verification for Title II, III, and IV

Policy

When verifying an applicant's level of income for the purpose of establishing "economically disadvantaged" status for eligibility under JTPA, SSDI is excluded income. This applies to all eligibility determination and verification under Titles II, III, and IV-C.

4) Waive the Youth OJT Wage Restrictions

Waiver Background

The Amendments of 1992 to JTPA revised the act by increasing the minimum allowable wage for youth OJT placements. As a result, the JTPA requires employers to pay youth OJT participants a wage equaling or exceeding the average wage at placement for adult participants in the SDA. The intent of this change was to increase the quality of youth OJT and the probability of placement and retention in the job market. However, employers have expressed reluctance in hiring inexperienced youth at a wage comparable to that paid to experienced adults. Consequently, SDAs have generally confined training for youth to work experience, limited internships, entry employment experience, and classroom training activities.

Affected Laws and Policies

- JTPA Section 264(d)(3)(C)(i)
- JTPA Final Rule, Title 20 CFR Sections 627.240(d) & (j) and 628.804(j)(1)(i)

(No state guidance in effect at this time.)

Policy

Prior to a youth participant's placement, OJT must be assessed and documented in the ISS as an appropriate mode of training. Through agreement with the workplace employer and the SDA, the wage paid to a youth placed in an OJT must equal or exceed the prevailing wage for the position. Additionally, the position should have career advancement potential.

5) Allow Employability Enhancement Training for Youth

Waiver Background

The JTPA directs Private Industry Councils (PIC), in consultation with appropriate organizations, to set youth competency levels based upon factors such as entry level skills and other hiring standards. For an SDA to obtain credit for having either a youth "Returned to Full-Time School" or "Remained in School," the youth must:

- (1) Be making satisfactory progress in school; and
- (2) For youth aged:
 - (a) 16-21: attain a PIC-approved Youth Employment Competency (YEC) in Basic Skills or Job Specific Skills; or
 - (b) 14-15: attain a PIC-approved YEC in Pre-employment/Work Maturity or Basic Education Skills.

Affected Laws and Policies

- JTPA, Section 106(b)
- DOL TEIN 5-93, Change 1, dated June 23, 1994
- JTPA Directive D97-12, dated January 20, 1998, Subject: Title II Performance Standards for Program Year 1997-98
- JTPA Directive D95-34, dated May 23, 1996, Subject: Youth Employment Competencies
- JTPA Client Forms Handbook
- JTPA Client Forms Manual

Policy

An SDA may allow the attainment of any Youth Employment Competency by any age youth to meet the required Youth Employment Competency under “Returned to Full-Time School” or “Remained in School” definitions for the Youth Employability Enhancement outcome.

6) Employment Generating Activities

Policy regarding this waiver was issued in JTPA Directive D98-2, dated August 11, 1998, Subject: Employment Generating Activities.

7) Allow the Use of Program Income Across JTPA Titles

Waiver Background

The JTPA Amendments of 1992 and the implementing regulations defined program income and specified the allowable use and obligational authority. Program income is retained by the entity that earned it; this restriction prevents the pooling of small sums of program income for use on a single project. Current law permits the use of program income across the Title. Program income earned by a Title II-A project may be expended on a Title II-C or Title II-B project as long as the contract under which the program income was earned contains provisions for the other parts. The administrative cost limit is the only cost limit applied to program income.

Affected Laws and Policies

- JTPA Section 141(m)
- 20 CFR Section 627.450(c)
- JTPA Directive D97-10, dated October 29, 1997, Subject: Program Income Policy

Policy

Program income earned as a result of grant or subgrant activity may be spent for any JTPA activity. This includes the use of program income in between titles, such as Titles II and III. The administrative cost limit does not apply to the expenditure of program income.

This waiver does not grant the SDA authority to claim subrecipient program income. Program income is retained by the entity that earned it unless the

requirements established in JTPA Directive D97-10 (program income) are met.

ACTION:

The SDAs must implement the three statewide waivers and may implement any or all of the seven optional waivers.

Statewide waivers are effective retroactively to July 1, 1998-June 30, 1999. The SDAs selecting only statewide waivers must complete the administrative requirements of JTPA Directive D97-27 and forward the "Waiver Checklist and Performance Agreement" to the state.

Effective until June 30, 1999, optional waivers are not retroactive to July 1, 1998. Optional waivers are effective only upon the SDA's completion of all administrative requirements stated in JTPA Directive D97-27, and the state's receipt of the "Waiver Checklist and Performance Agreement."

INQUIRIES:

Please direct inquiries about this directive to your program manager at (916) 654-7799 or Georganne Pintar, Policy Unit Manager, at (916) 654-7611.

/S/ BILL BURKE

Assistant Deputy Director

Attachments

Attachments are available in our Resource Information Center or by clicking on the link below. Copies may also be obtained by e-mailing JTPD at JTPDLIB@EDD.CA.GOV (subject line should read: "Attachment") or by contacting Gia Valla at (916) 654-7686.

1. Department of Labor, JTPA Liaison Letter
2. California JTPA Grant Agreement Modification